

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2021

CORAM:

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.2001 of 2021
and C.M.P.No.15187 of 2021
(Through Video Conference)

S.R. Elango

...Petitioner

Versus

1. Thenmozhi

2. Shankar

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India is file against the fair and decretal orders dated 04.02.2020 passed in I.A.No.12 of 2020 in I.A.No.827 of 2013 in O.S.No.73 of 2013 on the file of the Additional District Munsif Court, Cheyyar.

For Petitioner : Mr.P. Mani

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.12 of 2020 in I.A.No.827 of 2013 in O.S.No.73 of 2013 on the file of Additional District Munsif Court, Cheyyar.

2. I.A.No.12 of 2020 was filed for restoring the I.A.No.827 of 2013 which was dismissed on 19.12.2019. I.A.No.827 of 2013 is an application filed under Order XXVI Rule 9 and Section 151 of the Civil Procedure Code, for appointing an Advocate Commissioner to inspect the suit property along with the Surveyor.

3. The learned counsel for the petitioner submitted that the petitioner has paid the fees for the Advocate Commissioner. Inspite of that, the Advocate Commissioner has not taken any steps to inspect the property and he is colluding with the other side. The petitioner is not at fault in not inspecting the suit property. Therefore, he prays for setting aside the order of the learned Additional District Munsif, Cheyyar.

4. Considered the submissions of the learned counsel for the petitioner and perused the records.

5. The perusal of the order of the learned Additional District Munsif, Cheyyar in I.A.No.12 of 2020 shows that the Advocate Commissioner was appointed in I.A.No.827 of 2013 on 20.11.2013. The petitioner has not taken

any steps to take the Advocate Commissioner to inspect the suit property. Meanwhile, the suit was dismissed for default and therefore, the petition for appointment of an Advocate Commissioner in I.A.No.827 of 2013 was also closed. Thereafter, the suit was restored to file and I.A.No.827 of 2013 was also restored on 28.04.2016. Even thereafter, the petitioner has not taken any steps to take the Advocate Commissioner for inspecting the suit property and therefore, the petition was dismissed on 06.07.2016.

6. It is seen that the petitioner filed I.A.No.735 of 2018 for setting aside the order passed in I.A.No.827 of 2013 and that was allowed on 07.07.2019 with a condition that the petitioner should take steps to inspect the property by the Advocate Commissioner within one month from the date of receipt of that order. That order was not complied for a period of four months and therefore, I.A.No.827 of 2013 was dismissed on 19.12.2019.

7. With regard to the allegations made against the Advocate Commissioner, it is found by the learned Judge that the petitioner has not filed any memo or petition before the trial Court informing about the non-cooperation of the Advocate Commissioner. Finding that the petition to

appoint an Advocate Commissioner was filed only to drag on the proceedings and inspite of giving sufficient opportunities, the petitioner has not taken any steps to inspect the property by the Advocate Commissioner, I.A.No.827 of 2013 was dismissed.

8. This aforesaid observation was made by the learned Additional District Munsif, Cheyyar shows that in a suit for bare injunction, the petitioner filed a petition for appointment of an Advocate Commissioner alongwith a Surveyor. Inspite of the fact that the petition was allowed and sufficient opportunities were given, the petitioner has not taken any fruitful steps to take the Advocate Commissioner to inspect the suit property. Therefore, this Court finds no reason to interfere with the order of the learned Additional District Munsif, Cheyyar and the order passed by the learned Additional District Munsif, Cheyyar stands confirmed. Accordingly, this **Civil Revision Petition stands Dismissed**. No costs. Consequently, connected miscellaneous petition stands closed.

20.09.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order

sts/jai

To:
The Additional District Munsif Court,
Cheyyar.



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G.CHANDRASEKHARAN, J.,

sts/jai



Order made in
C.R.P.(PD)No.2001 of 2021

Dated:
20.09.2021

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